92-684

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

THE PAYMASTER CORPORATION,

Petitioner,

v.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

What party bears the burden of proving a disputed issue of fact on a motion for relief from judgment under Rule 60(b)(5) of the Federal Rules of Civil Procedure?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

OPINIONS BELOW 2

JURISDICTION 2

STATUTE INVOLVED 3

STATEMENT OF THE CASE 4

Paymaster's Judgment Against ABIC and Other Tortfeasors 4

Paymaster Settlement and ABIC Settlement 4

ABIC's Rule 60(b) Motion 6

District Court Decision 6

Ninth Circuit Opinion 7

Denial of Petition for Rehearing 8

REASONS FOR GRANTING THE WRIT 8

I. THE NINTH CIRCUIT'S UNPRECEDENTED OPINION UNDERMINES THE FINALITY OF JUDGMENTS 9

II. UNTIL NOW, CIRCUITS COURTS HAVE UNIFORMLY RULED THAT THE MOVING PARTY HAS THE BURDEN OF PROOF UNDER RULE 60(b) 10

III. THE COURT SHOULD CLARIFY THAT THE SUBPARTS OF RULE 60(b)(5) ARE NOT SUBJECT TO DISPARATE BURDENS OF PROOF .. 11

CONCLUSION 14

TABLE OF CONTENTS – Continued

Page

INDEX TO APPENDIX

Published Opinion Of United States Court Of Appeals For The Ninth Circuit, filed April 14, 1992 [published at 962 F.2d 853] ..... App. 1

Order Of United States Court Of Appeals For The Ninth Circuit Denying Petition For Rehearing, filed July 14, 1992 ..... App. 18

Unpublished Decision Of United States District Court For The Central District Of California, filed August 9, 1990 ..... App. 20

TABLE OF AUTHORITIES

Page

CASES

Assman v. Fleming, 159 F.2d 332 (8th Cir. 1947) . . . 11, 12

Atchison, Topeka and Santa Fe Railway Co. v. Barrett, 246 F.2d 846 (9th Cir. 1957) 11

Bally Export Corp. v. Balicar, Ltd., 804 F.2d 398 (7th Cir. 1986) 11

Browder v. Director, Illinois Dept. of Corrections, 434 U.S. 257 (1978) 3

DiVito v. Fidelity and Deposit Company of Maryland, 361 F.2d 936 (7th Cir. 1966) 11, 12

Grogan v. Garner, 498 U.S. ___, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991) 12, 13

Herman & MacLean v. Huddleston, 459 U.S. 375 (1983) 9, 13

In re Stone, 588 F.2d 1316 (10th Cir. 1978) 11

Marshall v. Board of Education of Bergenfield, New Jersey, 575 F.2d 417 (3rd Cir. 1978) 11

McLawhorn v. John W. Daniel & Co., Inc., 924 F.2d 535 (4th Cir. 1991) 11

Pardo v. Wilson Line of Washington, Inc., 414 F.2d 1145 (D.C. Cir. 1969) 10

Rufo v. Inmates of Suffolk County Jail, 502 U.S. ___, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) 12

Smith v. Kincaid, 249 F.2d 243 (6th Cir. 1957) 11

United States v. Harrison County, Mississippi, 463 F.2d 1328 (5th Cir. 1972) 11

United States v. Proceeds of Sale of 3,888 Pounds of Atlantic Sea Scallops, 857 F.2d 46 (1st Cir. 1988) 10

TABLE OF AUTHORITIES – Continued

Page

STATUTES

11 U.S.C. § 523 13
15 U.S.C. § 78j(b) 9
28 U.S.C. § 1254(1) 2
28 U.S.C. § 1291 3
28 U.S.C. § 2101(c) 2
28 U.S.C. § 1331 2
28 U.S.C. § 1332 2
28 U.S.C. § 1337 2

RULES

Federal Rules of Civil Procedure

Rule 60(b) ..... *passim*
Rule 60(b)(1) 10, 11
Rule 60(b)(3) 11
Rule 60(b)(4) 11
Rule 60(b)(5) 6, 10, 11, 12
Rule 60(b)(6) 11

SUPREME COURT RULES

13.4 2
29.1 1
30.1 2

OTHER AUTHORITY

7 Moore's Federal Practice ¶ 60.28, at 60-323 (2d ed. 1992) 10

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THE PAYMASTER CORPORATION,

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AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA,

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Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

The Paymaster Corporation ("Paymaster")[1] petitions that a writ of certiorari issue to review the published opinion of the United States Court of Appeals for the Ninth Circuit that it filed on April 14, 1992 in this civil action.

[1] The parties to this proceeding are listed in the caption of this petition. All other parties have settled. Paymaster has no parent corporations, subsidiaries or affiliates that are subject to disclosure under Supreme Court Rule 29.1.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is published at 962 F.2d 853 (9th Cir. 1992). The text of the opinion is reprinted in the appendix, beginning at App. 1. The Ninth Circuit's order denying rehearing appears at App. 18-19.

The decision of the United States District Court for the Central District of California is unreported. The text of the decision is reprinted in the appendix, beginning at App. 20.

JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1254(1). The opinion and judgment of the Ninth Circuit were filed on April 14, 1992. *See* App. 1-2. On May 1, 1992, the Ninth Circuit entered an order granting Paymaster until May 6, 1992 to petition for rehearing. Paymaster timely filed a petition for rehearing on April 29, 1992. On July 14, 1992, the Ninth Circuit filed its order denying the petition (Fletcher, J., dissenting). *See* App. 18-19.

The time to petition this Court therefore runs from the first day after July 14, 1992. Because the 90th and 91st days following July 14, 1992 are either a Sunday or a federal legal holiday, the last day to file this petition is October 13, 1992 under Supreme Court Rule 30.1 (computation of time) and Supreme Court Rule 13.4 and 28 U.S.C. § 2101(c) (time for filing petition).

The district court had jurisdiction under 28 U.S.C. §§ 1331-32, and 1337 of Paymaster's claims. The Ninth

Circuit had jurisdiction under 28 U.S.C. § 1291 of Paymaster's appeal from the order of the district court that altered Paymaster's judgment under Rule 60(b). *See Browder v. Director, Department of Corrections*, 434 U.S. 257, 263 n.7 (1978) (order under Rule 60(b) is final and appealable).

STATUTE INVOLVED

Rule 60(b) of the Federal Rules of Civil Procedure provides in relevant part:

> (b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. . . .

STATEMENT OF THE CASE

Paymaster's Judgment Against ABIC and Other Tortfeasors

Following a five week jury trial, Petitioner Paymaster was granted a judgment for compensatory and punitive damages against Respondent American Bankers Life Insurance Company of Florida ("ABIC") and other tortfeasors. *See* App. 2-3, 20-21.

For ABIC's misconduct, Paymaster was awarded a judgment against ABIC of $5,500,000 in compensatory damages, $517,707.01 in costs, and $2,361,000 in punitive damages. The total judgment against ABIC was $8,378,707.01. *See* App. 21.

In the same judgment, Paymaster was also awarded damages against members of the Rayden family (the "Raydens") and United Commercial Insurance Services, Inc. ("UCIS"). In the judgment, the Raydens and UCIS were held jointly and severally liable to Paymaster for the $6,017,707.01 in compensatory damages and costs awarded against ABIC. UCIS was held separately liable for an additional award of $3,000,000 in punitive damages. *See* App. 21.

The Ninth Circuit subsequently affirmed this judgment in favor of Paymaster. *See* App. 21. The Ninth Circuit's mandate issued on May 23, 1990. *See id.* ABIC's petition for certiorari was thereafter denied by this Court.

Paymaster Settlement and ABIC Settlement

In 1988, during the pendency of ABIC's unsuccessful appeal to the Ninth Circuit, Paymaster entered into a

settlement (the "Paymaster Settlement") with the Raydens and UCIS. Under the Paymaster Settlement, Paymaster was to receive a total of $1,700,000 from the Raydens and UCIS's insurers. *See* App. 2-3, 21-24.

At the same time, the Raydens and UCIS entered into a settlement (the "ABIC Settlement") with ABIC. *See* App. 1-4, 21-24. In this settlement, ABIC agreed to release its cross-claims against the Raydens and UCIS for indemnity and contribution for ABIC's liability to Paymaster. *See id.* As a condition to this release, ABIC required delivery of a partial satisfaction of judgment from Paymaster in the amount of $1,700,000, to be credited against the punitive damages portion of Paymaster's judgment against ABIC. *Id.*

In November 1988, Paymaster did receive a payment of $1,700,000 from the Raydens and UCIS's insurers. In the same month, Paymaster delivered a partial satisfaction of judgment to ABIC in the amount of $1,700,000. *See* App. 23-24.

Thus, Paymaster received $1,700,000 in funds and gave ABIC a credit of $1,700,000 on the punitive damages portion of the $8,378,707.01 judgment against ABIC. Nevertheless, as described below, the Ninth Circuit held that ABIC was entitled to a double credit of $3,400,000 – twice the amount of cash received by Paymaster, and twice the stated amount of the satisfaction of judgment that Paymaster delivered to ABIC.

ABIC's Rule 60(b) Motion

Although the Paymaster Settlement and ABIC Settlement were consummated in November 1988, ABIC did not then seek to have the judgment reduced by more than the $1,700,000 partial satisfaction delivered by Paymaster.

Nearly two years later, in May 1990, the Ninth Circuit issued its mandate affirming Paymaster's judgment against ABIC. *See* App. 21. ABIC then decided that it would be a good idea to persuade the trial court to rule that ABIC was entitled to a double credit of $3,400,000.[2]

On June 20, 1990, ABIC filed a motion for partial relief from judgment under Rule 60(b)(5) of the Federal Rules of Civil Procedure. The motion sought an order that, by virtue of the Paymaster Settlement and the ABIC Settlement, ABIC's liability to Paymaster had been reduced by twice the $1,700,000 paid to Paymaster. Paymaster opposed the motion and submitted affidavits that conflicted with the affidavits submitted by ABIC. *See* App. 6, 9, 32-33.

District Court Decision

On August 9, 1990, U.S. District Judge Stephen V. Wilson filed an unpublished decision that granted ABIC's

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[2] By this time, the district judge who both presided at the jury trial and entered judgment against ABIC – the Honorable Pamela A. Rymer – had been elevated to the Ninth Circuit. As a result, ABIC's Rule 60(b) motion was assigned to U.S. District Judge Stephen V. Wilson, who had no prior knowledge of the misconduct by ABIC that resulted in Paymaster's large compensatory and punitive damages judgment against ABIC.

Rule 60(b) motion. *See* App. 20. Judge Wilson credited the declarations submitted by tortfeasor ABIC. In addition, Judge Wilson found that the Paymaster Settlement and the ABIC Settlement entitled ABIC to a $3,400,000 credit against Paymaster's judgment, even though:

a. Paymaster received only $1,700,000 in cash under the two settlements, and

b. the two settlements only required Paymaster to deliver a single, partial satisfaction of judgment to ABIC in the amount of $1,700,000. *See* App. 20-35.[3]

Paymaster timely appealed from this judgment on September 6, 1990.

Ninth Circuit Opinion

By a divided 2-1 opinion, the Ninth Circuit affirmed the double credit granted to ABIC on its Rule 60(b) motion. Writing for the majority, Judge Dorothy Nelson affirmed the judgment only by creating an unprecedented burden of proof rule for a Rule 60(b) motion:

a. Judge Nelson explained that Paymaster *would prevail* if the Court allocated the burden of proving the disputed meaning of the settlement documents to ABIC, the moving party. App. 7 n.2.

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[3] Judge Wilson also found that it would be contrary to public policy to permit Paymaster to credit the $1,700,000 payment to ABIC's punitive damage award. *See* App. 33-35. The Ninth Circuit neither reached this issue nor affirmed Judge Wilson on it. *See* App. 10 n.7.

b. However, Judge Nelson declined to hold that ABIC had the burden of proof on its Rule 60(b) motion, and instead ruled that the settlement documents should be interpreted as though *neither* party had the burden of proof. App. 7 n.2. Judge Nelson cited no authority for this reasoning, but explained: "The meaning of a contract should not depend on who instituted the litigation." *Id.*

In dissent, Judge Betty Fletcher wrote that "the majority's scenario does not have the ring of truth. It would have Paymaster agree to forego the possibility of recovering $3.4 million from [ABIC], a solvent, well-insured defendant, simply to obtain $1.7 million from UCIS, without any concession from [ABIC] that it would forego its appeal of Paymaster's judgment against it." App. 13.

Denial of Petition for Rehearing

On April 29, 1992, Paymaster petitioned for rehearing on the ground that the Ninth Circuit had misapplied the burden of proof and committed other errors. With Judge Fletcher again dissenting, the Ninth Circuit denied Paymaster's petition on July 14, 1992. App. 18-19.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's unprecedented opinion undermines the finality of judgments, conflicts with the law of all other circuits on the burden of proof on a Rule 60(b) motion, and disregards the principles of statutory interpretation that this Court has attempted to develop.

I. THE NINTH CIRCUIT'S UNPRECEDENTED OPINION UNDERMINES THE FINALITY OF JUDGMENTS

This Court has granted certiorari when a circuit court imposed an "unprecedented" burden of proof. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 379 n.7 (1983) (reversing the Fifth Circuit's "unprecedented" adoption of a "clear-and-convincing" burden of proof for private federal securities claims under § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b)).

As described below, the Ninth Circuit's opinion is unprecedented. *See* Part II, below. Further, it threatens the finality of judgments by disregarding the burden of proof on the party that attacks a final judgment under Rule 60(b).

The facts of this case prove this point: after prevailing in a lengthy jury trial, Paymaster lost the benefit of $1,700,000 of the damages awarded by the jury because the Ninth Circuit relieved ABIC of the burden of proving its questionable story about the purported terms of a post-judgment settlement. *See* App. 7 n.2. The majority opinion expressly concedes that it would have ruled for Paymaster if ABIC had to carry the burden of proof on its Rule 60(b) motion.[4] *Id.* Judge Fletcher dissented because she smelled a rat: ABIC's story, even as recounted by the majority, "does not have the ring of truth." *See* App. 13.

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[4] Thus, the judgment of the Ninth Circuit turned on the burden of proof issue. The Ninth Circuit did not adopt the public policy rationale of the district court. *See* App. 10 n.7.

If this Court allows the Ninth Circuit opinion to stand, it will open the door to other questionable Rule 60(b) motions to deprive a prevailing party of the benefits of a judgment. Inevitably, the federal court system will have to deal with the increased caseload caused by this incentive to attack final judgments. The Court should nip this disaster in the bud by clarifying once and for all that the moving party on a Rule 60(b) motion bears the burden of proof.

II. UNTIL NOW, CIRCUITS COURTS HAVE UNIFORMLY RULED THAT THE MOVING PARTY HAS THE BURDEN OF PROOF UNDER RULE 60(b)

Conceding that Paymaster would prevail if ABIC had to carry the burden of proving its Rule 60(b)(5) motion, *see* App. 7 n.2, the Ninth Circuit made the unprecedented decision that ABIC did not have to satisfy this burden. *See id.* The Ninth Circuit cited no precedent for this rule, other than to *reject* a Sixth Circuit opinion that applied a different approach in a contract dispute. *Id.*

The Ninth Circuit's disregard of the burden of proof on a Rule 60(b) motion is unprecedented. "The burden is on the movant to establish a ground or grounds entitling him to relief from the judgment." 7 Moore's Federal Practice ¶ 60.28, at 60-323 (2d ed. 1992). Until now, circuit courts uniformly made the moving party bear the burden of proof on a Rule 60(b) motion. *See Pardo v. Wilson Line of Washington, Inc.*, 414 F.2d 1145, 1148 (D.C. Cir. 1969) (Rule 60(b)); *United States v. Proceeds of Sale of 3,888 Pounds of Atlantic Sea Scallops*, 857 F.2d 46, 47 (1st Cir. 1988) (Rule

60(b)(1)); *Marshall v. Board of Education of Bergenfield, New Jersey*, 575 F.2d 417, 423 (3rd Cir. 1978) (Rule 60(b)(5) and (6)); *McLawhorn v. John W. Daniel & Co., Inc.*, 924 F.2d 535, 538 (4th Cir. 1991) (Rule 60(b)(3)); *United States v. Harrison County, Mississippi*, 463 F.2d 1328, 1330 (5th Cir. 1972) (Rule 60(b)); *Smith v. Kincaid*, 249 F.2d 243, 245 (6th Cir. 1957) (Rule 60(b)(1) and (6)); *Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d 398, 400 (7th Cir. 1986) (Rule 60(b)(4))[5]; *DiVito v. Fidelity and Deposit Company of Maryland*, 361 F.2d 936, 939 (7th Cir. 1966) (Rule 60(b)(3)); *Assman v. Fleming*, 159 F.2d 332, 336 (8th Cir. 1947) (Rule 60(b)(3)); *Atchison, Topeka and Santa Fe Railway Co. v. Barrett*, 246 F.2d 846, 849 (9th Cir. 1957) (Rule 60(b)(3)); *In re Stone*, 588 F.2d 1316, 1319 (10th Cir. 1978) (Rule 60(b)(1)).

III. THE COURT SHOULD CLARIFY THAT THE SUB-PARTS OF RULE 60(b)(5) ARE NOT SUBJECT TO DISPARATE BURDENS OF PROOF

As shown in Part II, above, until now circuit courts uniformly placed the burden of proof on the party that moved for relief under Rule 60(b). But the circuit courts have *not* uniformly applied the same *amount* of burden. In particular, when a moving party seeks relief from judgment for fraud under Rule 60(b)(3), then courts have required proof by "clear and convincing" evidence,

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[5] In *Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d 398, 401 (7th Cir. 1986), the Seventh Circuit rejected district court opinions that held that the plaintiff has the burden of proof when a defendant seeks relief from judgment under Rule 60(b)(4). The Ninth Circuit did not cite those discredited district court opinions, but its opinion is equally insupportable.

instead of a mere preponderance. *See, e.g., DiVito v. Fidelity and Deposit Company of Maryland*, 361 F.2d 936, 939 (7th Cir. 1966); *Assman v. Fleming*, 159 F.2d 332, 336 (8th Cir. 1947).

Under the Ninth Circuit's opinion, the disparate burdens of proof approach goes to a new extreme: the *subparts* of Rule 60(b)(5) are now subject to multiple burdens of proof depending on what *word* of subparagraph (b)(5) the moving party invokes. This result follows from the recent decision of this Court on Rule 60(b)(5) in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. ___, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). In *Rufo*, this Court held that Rule 60(b)(5) places the burden of proof on the moving party that seeks to modify the *prospective* effects of a federal consent decree. *Rufo*, 116 L.Ed.2d at 892. Yet, under the Ninth Circuit's opinion, a party that moves for relief under Rule 60(b)(5) for a *retroactive* credit based on a settlement has no burden of proof.

In creating a novel "no burden of proof" standard for certain Rule 60(b)(5) motions, the Ninth Circuit failed to state or apply any principles of statutory analysis. The Ninth Circuit relied entirely upon its belief that the "meaning of a contract should not depend on who instituted the litigation." One could as easily say that "the outcome of a lawsuit should not depend on the burden of proof." The Ninth Circuit opinion invites courts to make up the law as they go along based on unprincipled concepts of what seems like a good idea at the time.

The application of disparate burdens of proof to Rule 60(b) motions needs to be re-examined in light of the recent decision of this Court in *Grogan v. Garner*, 498 U.S.

___, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). In *Grogan*, this Court expressly declined to apply disparate burdens of proof to different subsections of a single statutory provision, 11 U.S.C. § 523, where the provisions were silent on the burden of proof and the Court saw no other evidence that different burdens were intended by Congress. In contrast to the approach of this Court in *Grogan*, the Ninth Circuit conducted no textual or historical analysis whatsoever to support the result.

The interpretive approach of *Grogan* compels the conclusion that the Ninth Circuit erred. As in *Grogan*, the text of the statute, Rule 60(b), is silent on the burden of proof. Unlike in *Grogan*, however, the history of the statute tends to show that a heavy burden of proof should apply to a party that seeks to alter the terms of a judgment. As this Court acknowledged in *Herman & MacLean v. Huddleston*, 459 U.S. 375 (1983), the heavy "clear-and-convincing" burden of proof arose in courts of equity and "subsequently received wide acceptance in equity proceedings to set aside presumptively valid written instruments on account of fraud." *Id.* at 387 n.27. Here, Paymaster lost the benefits of a presumptively valid judgment as the result of the Ninth Circuit's accepting the story of an adjudicated tortfeasor. The Ninth Circuit did so by erroneously and inequitably relieving ABIC of the burden applied by other circuit courts and courts of equity.

Because Rule 60(b) is silent on the burden of proof issue, this Court can and should grant Paymaster's petition to review the Ninth Circuit's unprecedented ruling. *See Herman & MacLean v. Huddleston, supra*, 459 U.S. at 389 ("Where Congress has not prescribed the appropriate

standard of proof and the Constitution does not dictate a particular standard, we must prescribe one").

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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INDEX TO APPENDIX

Page

1. Published Opinion Of United States Court Of Appeals For The Ninth Circuit, filed April 14, 1992 [published at 962 F.2d 853].....App. 1

2. Order Of United States Court Of Appeals For The Ninth Circuit Denying Petition For Rehearing, filed July 14, 1992.....App. 18

3. Unpublished Decision Of United States District Court For The Central District Of California, filed August 9, 1990.....App. 20

PUBLISHED OPINION OF
UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT
[PUBLISHED AT 962 F.2d 853]

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED COMMERCIAL INSURANCE SERVICE, INCORPORATED, d/b/a UNITED CHECKWRITER SERVICES; BURTON D. RAYDEN; JEFFREY L. RAYDEN; JOEL RAYDEN, Plaintiffs, v. THE PAYMASTER CORPORATION, Counterclaim Appellant,	No. 90-56108 D.C. No. CV 80-3780 SVW OPINION
THE PAYMASTER CORPORATION, Counterclaim Appellant, v. BURTON D. RAYDEN, et al., Counterclaim Defendants, and AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, Counterclaim Defendant-Appellee.	

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted
October 10, 1991 – Pasadena, California

Filed April 14, 1992

Before: Betty B. Fletcher, Dorothy W. Nelson,
and Melvin Brunetti, Circuit Judges

Opinion by Judge D.W. Nelson; Dissent by Judge Fletcher

OPINION

D. W. NELSON, Circuit Judge:

Appellant Paymaster Corp. was awarded a judgment in excess of $11 million in compensatory and punitive damages against several defendants, including appellee American Bankers Insurance Corp. (American). Paymaster settled with all defendants other than American for $1.7 million in compensatory damages. Concurrent with this settlement, Paymaster executed a partial satisfaction of judgment in favor of American. The agreement provided that American's *punitive* damage liability would be reduced by $1.7 million, in exchange for American dropping its claim against the other defendants for indemnification.[1]

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[1] The other defendants, principally United Commercial Insurance Service (United), had refused to settle with Paymaster unless American dropped its indemnification claim against them. Thus, Paymaster needed American's agreement in order to finalize the original settlement.

American claims that this agreement was separate from the underlying settlement, and that it is therefore entitled to $1.7 million reduction in compensatory damages (for which it was jointly and severally liable) pursuant to the settlement *and* a $1.7 million reduction in its punitive damages pursuant to the satisfaction. Paymaster claims that it agreed to reduce American's punitive damage liability by $1.7 million *instead* of reducing compensatory damages. The district court found that American was entitled to $3.4 million setoff on the basis of two separate satisfactions. We affirm.

FACTS

Paymaster sued American, United, and several individual defendants (the Raydens) for violations of the Lanham Act and California unfair competition law. In 1987, Paymaster was awarded a judgment against all defendants for roughly $6.0 million in compensatory damages and costs. All defendants were jointly and severally liable for these damages. In addition, United was held liable for $3.0 million in punitive damages and American for nearly $2.4 million in punitive damages. American and the other defendants maintained cross-claims against each other for indemnification.

All defendants appealed the district court's judgment on the merits to the Ninth Circuit. While that appeal was pending, Paymaster agreed with United and the Raydens to settle their portion of the case. Pursuant to the Settlement Agreement, the Raydens would pay $500,000 and United's insurers would pay $1.2 million to Paymaster.

However, the Raydens and United conditioned their settlement with Paymaster on receiving a full release from American of its cross-claim for indemnity. Thus, Paymaster could not recover its $1.7 million from United unless it could somehow persuade American to give up its cross-claim against United for the full amount of the judgment.

American demanded consideration in exchange for relinquishing its cross-claim against United and the Raydens. Accordingly, Paymaster executed a Partial Satisfaction of Judgment in favor of American, which provided that American's punitive damage liability would be reduced in an amount equal to the amount United and the Raydens ended up paying Paymaster. This partial satisfaction was expressly "in consideration of [American] entering into its contingent settlement agreement and mutual release with [United] . . . " Paymaster letter to American, Nov. 11, 1988.

In return, American executed a Settlement Agreement and Mutual Release with United in which each agreed to drop its claims against the other. This mutual release was expressly contingent upon American receiving the partial satisfaction of judgment. *Id.* at 1.1.

Paymaster and American subsequently disputed the amount remaining due on the judgment. American filed a Motion for Partial Relief from Judgment under Rule 60(b)(5), claiming that the combined effect of the agreements was to reduce its liability by $3.4 million ($1.7 million each in compensatory and punitive damages). The trial judge received declarations from counsel involved in negotiating the agreements, and heard oral argument. Relying on the two agreements, the partial

satisfaction, and Paymaster's November 11 letter, as well as on two of the declarations of counsel, the trial court concluded that two separate satisfactions occurred – one between United and Paymaster, and another between American and Paymaster. It therefore concluded that American's liability should be reduced by $3.4 million, and entered judgment accordingly. Paymaster appeals.

DISCUSSION

Standard of Review

District court decisions under Rule 60(b) are normally reviewed only for an abuse of discretion. *Browder v. Director, Illinois Dept. of Corrections*, 434 U.S. 257, 263, 98 S.Ct. 556, 560, 54 L.Ed.2d 521 (1978). However, we review de novo the district court's decision of questions of law. *Pekarsky v. Ariyoshi*, 695 F.2d 352, 354 (9th Cir. 1982), *cert. denied* 464 U.S. 1052, 104 S.Ct. 735, 79 L.Ed.2d 194 (1984).

"The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally." *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). This is true even though the underlying cause of action is federal. *Id.*; *In re Beverly Hills Bankcorp.*, 649 F.2d 1329, 1332-33 (9th Cir. 1981). Under California law, the interpretation of a contract is a question of law subject to de novo review. If interpretation requires the resolution of disputed facts or a determination of the credibility of extrinsic evidence, the appellate court will defer to the district court's resolution of those issues if it is supported by substantial evidence. But once the facts are resolved, the interpretation of the agreement in light of those facts is a question of

law. *Parsons v. Bristol Development Co.*, 62 Cal.2d 861, 44 Cal.Rptr. 767, 770, 402 P.2d 839, 842 (Cal. 1965).

In this case, the district court relied primarily on the language of three contracts – the Settlement Agreement between United and Paymaster, the Settlement Agreement and Mutual Release between United and American, and the November 11 letter from Paymaster to American. The court also considered the declarations of the parties' attorneys regarding the meaning of the letter, resolving the conflict in their testimony in favor of American. Finally, it considered issues of public policy in interpreting the contract. The resolution of the credibility dispute regarding the meaning of the letter must be upheld unless clearly erroneous, while the remainder of the district court's conclusions are subject to de novo review.

Contract Interpretation

A settlement agreement is treated as any other contract for purposes of interpretation. *Adams v. Johns-Manville Corp.*, 876 F.2d 702, 704 (9th Cir. 1989). Under California law, the intent of the parties determines the meaning of the contract. Cal. Civil Code §§ 1636, 1638. The relevant intent is "objective" – that is, the intent manifested in the agreement and by surrounding conduct – rather than the subjective beliefs of the parties. *Lawyer's Title Ins. Co. v. U.S. Fidelity & Guar. Co.*, 122 F.R.D. 567, 569 (N.D. Cal. 1988); *Beck v. American Health Group Int'l*, 211 Cal.App.3d 1555, 260 Cal.Rptr. 237, 242 (1989). For this reason, the true intent of a party is irrelevant if it is unexpressed. *Union Bank v. Winnebago Inds.*, 528 F.2d 95,

99 (9th Cir. 1975); *Mill Valley v. Transamerica Ins. Co.*, 98 Cal.App.3d 595, 159 Cal.Rptr. 635, 659 (1979).

Applying these principles to this case is not simple. The relevant documents are silent on whether the $1.7 million reduction in American's punitive damages was meant to replace or supplement the compensatory damage reduction.[2]

The general legal rule is that a settlement with one defendant reduces the liability of all other defendants by an equal amount. *Krusi v. Bear, Stearns & Co.*, 144 Cal.App.3d 664, 192 Cal.Rptr. 793, 798 (Ct. App. 1983). This rule prevents a plaintiff from obtaining several satisfactions of its judgment – one from each party. Paymaster contends that this rule supports its position, since the legal presumption is that liability is reduced by an amount equal to the settlement ($1.7 million). What Paymaster ignores is the fact that American's liability is reduced by $1.7 million as a matter of law, without any agreement being signed. It would be redundant to draft an agreement which produced exactly the same result as would occur absent the agreement.

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[2] The Sixth Circuit has chosen to resolve a similar problem – where the contract is unclear and the court must choose one party's interpretation – by simply ruling against whatever party has the burden of proof. *United Steelworkers v. North Bend Terminal Co.*, 752 F.2d 256, 261 (6th Cir. 1984). We reject this approach. In this case, it would result in a ruling for Paymaster, since American chose to file this motion to determine its rights. Had American waited until Paymaster tried to collect on the judgment, on the other hand, such an approach would lead the Court to rule for American. The meaning of a contact should not depend on who instituted the litigation.

Paymaster contends that the agreement did modify the normal rule, since it provided for the $1.7 million to be credited towards American's punitive rather than compensatory damage liability.[3] But since Paymaster claims it intended to modify the normal rule (by replacing American's credit for compensatory damages), one would expect that at least one of the four documents at issue would mention the modification explicitly. No indication of such an intent to substitute punitive for compensatory damages can be found. Under well-established principles of California law, we cannot rely in interpreting the contract on Paymaster's unexpressed intent to deviate from the normal legal rule. *See Mill Valley*, 159 Cal.Rptr. at 639. In short, because it is Paymaster rather than American whose interpretation deviates from the normal operation of law, it is Paymaster who must pay the price for failing to specify what the contract meant.[4]

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[3] Paymaster also argues that it provided a benefit to American by listing the entire settlement with United and the Raydens as compensatory damages (since if United had paid its punitive damages, that amount would not have gone to reduce American's liability). This argument is disingenuous. Paymaster collected $500,000 from the Raydens, and $1.2 million from United's *insurers*. The Raydens owed no punitive damages and California law prohibits insurers from paying a punitive damage award. Thus, Paymaster could not have collected the $1.7 million without attributing it all to compensatory damages.

[4] For this reason, the dissent's argument that "[n]othing in the various settlement agreements supports the majority's version of the settlement," *post* at 859, simply misses the point. Nothing in the agreements supports the dissent's view, either. The dissent is reduced to relying on its common sense beliefs about what the parties *ought to have done* in order to support its interpretation of the contract. We do not believe this is an appropriate method of contract interpretation.

That the parties in fact intended there to be two separate satisfactions is suggested by the change in the language of the letter Paymaster sent to American. Paymaster sent a letter agreement on November 10. The district court found that American returned the letter unsigned because it did not specify that the consideration supporting the agreement to reduce punitive damages was independent of Paymaster's settlement with United. This finding, although disputed by Paymaster, is a factual conclusion from the extrinsic evidence and is not clearly erroneous.[5] The revised letter, dated November 11, provided that the Partial Satisfaction of Judgment was executed in consideration for American agreeing to drop its cross-claims against United. It said nothing about American giving up its right to a $1.7 million reduction in compensatory damages. This provision, and the fact that American insisted on its inclusion, suggest that American intended the Partial Satisfaction to operate independently of United's settlement, and that Paymaster acquiesced in that interpretation.

Finally, Paymaster relies on two cases which it claims establish a strong presumption against recording setoffs in an amount greater than plaintiff actually received. *See FSLIC v. Butler* 904 F.2d 505, 512 (9th Cir. 1990) ("The agreement on the amount of setoff should be very specific before the plaintiff is considered to have agreed to a

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[5] Under California law, extrinsic evidence is always relevant to help explain what a contract means, but not to vary the written terms. *Trident Center v. Connecticut Gen. Life Ins. Co.*, 847 F.2d 564, 568-70 (9th Cir. 1988); *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage Co.*, 69 Cal.2d 33, 69 Cal.Rptr. 561, 565-60, 442 P.2d 641, 645-46 (1968).

setoff larger than what he received in consideration from the settling defendant."); *accord Arbuthnot v. Relocation Realty Serv. Corp.*, 227 Cal.App.3d 682, 278 Cal.Rptr. 135, 138 (1991). These cases are inapplicable. The district court did not calculate the setoff at twice the value of the settlement. Instead, it found that two separate satisfactions occurred. The first, between United and Paymaster, operated by law to reduce American's compensatory damage liability by $1.7 million. In the second, American agreed to drop its cross claims in exchange for a $1.7 million reduction in punitive damages.[6]

In short, this Court is not persuaded that the contracts evidence an intent that the $1.7 million reduction in punitive damages was intended to replace the $1.7 million reduction in compensatory damages. Instead, the documents support the conclusion that the $1.7 million satisfaction of punitive damages was separate from and independent of the satisfaction of compensatory damages.[7]

Oral Testimony

Paymaster claims that it should have been allowed to present oral testimony – specifically, the testimony of

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[6] We are not persuaded that the fact that the two amounts are the same compels a different result. Deciding how much a claim is "worth" is necessarily an arbitrary process. It seems perfectly reasonable to us that the parties could have concluded that the amount Paymaster was able to recover from United was a good estimate of the value of American's claim against United.

[7] Because we read the contracts in this way, we have no occasion to consider whether a contrary reading would violate California public policy.

attorneys who participated in drafting the agreements – in support of its interpretation. Under Fed. R. Civ. P. 43(e), which normally governs motions, the trial court has wide discretion in deciding whether to admit or deny oral testimony. *Miles v. Dept. of the Army*, 881 F.2d 777, 784 (9th Cir. 1989). Paymaster contends, however, that this case should be treated as a trial on the merits of a contract action, and therefore should fall under Rule 43(a), which requires a district court to take oral testimony. Paymaster relies on *Sanders v. Monsanto Co.*, 574 F.2d 198, 199-200 (5th Cir. 1978), a Fifth Circuit case which held that a civil contempt action should fall within 43(a) because it was "more in the nature of a trial on the merits of a breach of the consent 'contract.' "

Sanders relied on the "highly factual" nature of the motion before it, finding oral testimony necessary because the proceedings depended "so heavily on complex facts not readily perceivable from the record." *Id.* at 199, 200. By contrast, in *Miles* the Ninth Circuit rejected a claim that oral testimony was required because "Miles' declaration provided the district court with adequate information" to decide the issue. 881 F.2d at 784.

We do not believe these cases are inconsistent. Where factual questions not readily ascertainable from the declarations of witnesses or questions of credibility predominate, the district court should hear oral testimony. In this case, however, Paymaster has conceded that the testimony it would present was contained in the declarations submitted to the district court. Further, as Paymaster itself concedes, "the Order granting [American]'s Rule 60(b)(5) Motion is based on the district court's interpretation of settlement documents and undisputed extrinsic

evidence". Where, as here, the primary issue before the court is a legal question, and what factual issues do exist are undisputed, we think little purpose would be served by a blanket rule requiring oral testimony.

CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.

FLETCHER, Circuit Judge, dissenting:

I dissent. A careful assessment of the relevant documents and the facts belies the majority's position.

The majority fails to examine the negotiating positions of Paymaster and American Bankers as a backdrop to the settlement they reached. Paymaster had a judgment against American Bankers, UCIS and the Raydens. Paymaster was awarded $5.5 million in compensatory damages from UCIS, American Bankers and the Raydens, $3.0 million in punitive damages from UCIS and $2.36 million in punitive damages from American Bankers.

Paymaster agreed to accept a payment of $1.7 million from UCIS and its insurers as full settlement of its judgment against UCIS and the Raydens. This made sense to Paymaster for two reasons: it removed any uncertainty as to the soundness of its judgment to the extent of $1.7 million and it secured such payment from credit risk. To obtain this settlement, Paymaster had to persuade American Bankers to waive its claims against UCIS. American Bankers, for its part, was faced with a potential $2.36 million liability for punitive damages, which its insurance

would not cover. Because it did have coverage for its compensatory damage liability, any reduction in such a sum was not of nearly as great significance to American Bankers. However, the reduction in punitive damages liability *was* very important to it and thus American Bankers entered into a settlement with Paymaster whereby the $1.7 million UCIS had agreed to pay would be credited towards punitive damages.

In light of these facts, the majority's scenario does not have the ring of truth. It would have Paymaster agree to forego the possibility of recovering $3.4 million from American Bankers, a solvent, well-insured defendant, simply to obtain $1.7 million from UCIS, without any concession from American Bankers that it would forego its appeal of Paymaster's judgment against it.

Nothing in the various settlement agreements supports the majority's version of the settlement. At the outset, nothing suggests Paymaster would credit American Bankers with a double settlement. Nowhere do the settlement agreements state that the $1.7 million Paymaster credited towards the punitive damages owed it by American Bankers was in addition to a separate $1.7 million setoff against American Bankers' compensatory damages liability. The majority relies on the notion that Paymaster had an affirmative obligation to include in the settlement documents a statement to the effect that the $1.7 million punitive damages reduction obviated the need for the court to apply the general rule of law that a settlement with one defendant reduces the liability of the remaining defendants by an equivalent amount. But there exists no reason, and certainly no support in California law, for placing such a burden on Paymaster here.

The purpose of the general rule of law is simply to ensure that a settling plaintiff does not recover twice for her injuries. A party cannot obtain damages from one defendant through a settlement agreement and expect to recoup those same damages again from the remaining defendants. The Paymaster-American Bankers agreement to set off dollar-for-dollar against punitive damages any amounts received from UCIS ensured that this would not happen. Rather than representing a deviation from the normal rule, as the majority contends, it fulfilled the very purpose of that rule. Paymaster stated that it would not attempt to collect from American Bankers the $1.7 million it had already received from UCIS. It did not then have to tell the court not to worry about a double recovery the possibility of which it had already eliminated.

The district court and the majority both go outside the settlement agreements and read unwarranted meaning into a passage added by Paymaster's counsel, at American Bankers' insistence, to a letter dated November 11 which accompanied the parties' partial satisfaction of judgment. The passage states as follows:

> In consideration of ABIC entering into its contingent settlement agreement and mutual release with UCIS, Burt, Eileen, Jeff and Joel Rayden and contingent releases with their insurers, Paymaster yesterday delivered to you a partial satisfaction of judgment against ABIC signed by me.

It is difficult to see how this passage supports American Bankers' position that it had negotiated an agreement to receive $3.4 million from Paymaster in return for waiving its cross-claims against UCIS. The passage has nothing to

do with the nature of the consideration American Bankers was to *receive* from Paymaster, but instead concerns the nature of the consideration it had *provided* to obtain a credit against its punitive damages liability. American Bankers was understandably worried that its insurance companies would question an agreement that was to reduce its punitive rather than its compensatory damages exposure, and it apparently sought to bolster the validity of this agreement by receiving an express declaration of the consideration it had given in order to secure it.

Indeed, the November 11 letter contains strong support for Paymaster's position. The letter provides that if Paymaster does not receive its expected payment of $1.7 million from UCIS and the other settling parties, "Paymaster will execute and ABIC [American Bankers] may file a satisfaction of judgment identical in form to that of the $1.7 million satisfaction referred to above providing for satisfaction in such amount as is actually retained by Paymaster from the insurance carriers or settling parties." The actual size of the credit against punitive damages American Bankers was to receive from Paymaster was thus entirely dependent upon the amount of money Paymaster ultimately recovered from UCIS. Far from constituting an independent credit of an additional $1.7 million to American Bankers, then, the punitive damages credit was viewed by the parties as embodying the normal rule of law and operating pursuant to it. By no means did the parties see their agreement as an entirely separate promise by Paymaster to credit American Bankers with an additional and absolute sum of $1.7 million no matter how much UCIS actually paid.

I note three other points. First, it is too much of a "coincidence" that the amount of the additional compensation Paymaster and American Bankers supposedly negotiated was identical in amount to that provided by operation of law. It seems far more reasonable to conclude that the parties saw their agreement as embodying the normal rule but crediting the payment against punitive damages instead of compensatory damages.

Second, the scenario the majority presents would make sense only if American Bankers had agreed not to appeal the judgment against it. Paymaster would then have been giving up $1.7 million of a judgment that was still subject to appeal, in exchange for a certain, sure, payment. This was not the case, however. The Paymaster-American Bankers settlement did not restrict American Bankers' right to appeal; indeed, American Bankers pursued an appeal to this court and petitioned for certiorari, albeit unsuccessfully.

Finally, had American Bankers really sought and received a $3.4 million credit for facilitating Paymaster's receipt of $1.7 million from UCIS, it presumably would have insisted that $2.36 million worth of this credit be allocated towards eliminating the punitive damages award for which it, rather than its insurance companies, was solely responsible. American Bankers has evidenced no intent in the actions leading up to these proceedings to make money for its insurance companies. To the contrary, it has sought all along to protect its own pocketbook at their expense. That is why it requested and received a punitive, rather than a compensatory, damages credit from Paymaster. To hold that it should receive an additional $1.7 million setoff that redounds only to the benefit

of its insurers would be to ignore the intent of the parties and to render senseless, from Paymaster's standpoint, the settlement agreement entered into between Paymaster and UCIS.

Thus, I dissent.

ORDER OF UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING, FILED JULY 14, 1992

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED COMMERCIAL INSURANCE SERVICE, INCORPORATED, d/b/a UNITED CHECKWRITER SERVICES; BURTON D. RAYDEN; JEFFREY L. RAYDEN; JOEL RAYDEN, Plaintiffs, v. THE PAYMASTER CORPORATION, Defendant,	No. 90-56108 USDC No. CV 80-3780 SVW ORDER
THE PAYMASTER CORPORATION, Counter-Claimant/Appellant, v. BURTON D. RAYDEN, et al., Counterclaim Defendants, and AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, Counterclaim Defendant/ Appellee.	

Before: FLETCHER, D.W. NELSON and BRUNETTI, Circuit Judges.

Judges D.W. Nelson and Brunetti voted to deny the petition for rehearing. Judge Fletcher voted to grant the petition for rehearing. The panel voted unanimously to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. (Fed.R. App. P. 35.)

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNPUBLISHED DECISION OF
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
FILED AUGUST 9, 1990

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED COMMERCIAL INSURANCE SERVICE, INCORPORATED, d/b/a UNITED CHECKWRITER SERVICES; BURTON D. RAYDEN; JEFFREY L. RAYDEN; JOEL RAYDEN, Plaintiffs, v. THE PAYMASTER CORPORATION, Defendant.	CASE NO. CV 80-3780 SVW
THE PAYMASTER CORPORATION, Counterclaim and Cross-Claimant, v. BURTON D. RAYDEN, JEFFREY L. RAYDEN, JOEL RAYDEN, and AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, Counterclaim Defendants,	MEMORANDUM OPINION AND ORDER

Counterclaim Defendant American Bankers Insurance Company of Florida ("ABIC") brings this motion for partial relief of judgment pursuant to Federal Rule of Civil Procedure 60(b)(5). The parties agree that all the

facts and evidence are before the Court in the form of the briefs and accompanying declarations and that the Court can decide the issue based on the papers and oral arguments.

STATEMENT OF FACTS

On May 7, 1987, this Court, Judge Pamela Rymer presiding, entered judgment in favor of The Paymaster Corporation ("Paymaster") and against the Counterclaim Defendants in the following manner:

(a) $5,500,000.00 in compensatory damages against ABIC, United Commercial Insurance Services, Inc. ("UCIS"), Burton D. Rayden, Jeffrey L. Rayden, and Joel Rayden (Collectively "the Raydens");

(b) $517,707.01 in costs against ABIC, UCIS, and the Raydens;

(c) $2,361,000.00 in punitive damages against ABIC; and

(d) $3,000,000.00 in punitive damages against UCIS.

The total sum of the Judgment entered against ABIC was $8,378,707.01. ABIC, the Raydens, and UCIS were jointly and severally liable for the aforesaid compensatory damages and costs, which amounted to $6,017,707.01. On May 23, 1990, the Ninth Circuit Court of Appeals issued its mandate under which the Judgment was affirmed.

During the pendency of the appeal, Paymaster entered into a written settlement agreement with all of the counterclaim defendants except ABIC. Pursuant to

the terms of that settlement, Paymaster was to receive from UCIS' insurers and the Raydens a partial satisfaction of the Judgment. The written settlement agreement provided as follows:

> 1.8 Paymaster likewise wishes to resolve any and all of its outstanding disputes with the Settling Parties and to obtain a partial satisfaction of the Paymaster Judgment. . . .

The amounts of the partial satisfaction and the parties paying the amounts were set forth in the agreement as follows:

> 2.1 The Settling Parties have agreed to pay the sum of $500,000 to Paymaster, and their insurers have agreed to pay the sum of $1,200,000 to Paymaster, which payments shall be made in the form of cashiers checks payable to Paymaster and/or by wire transfers to the trust account of Paymaster's counsel.

At the time this settlement was being negotiated, ABIC maintained a cross-claim against UCIS and the Raydens for indemnification and contribution which was based upon an express contractual indemnity agreement for the entire amount of the Judgment. UCIS' insurers and the Raydens would not make the $1,700,000 cash payment to Paymaster unless they could obtain a full and unconditional release from ABIC.

For UCIS to obtain a full and unconditional release from ABIC, Paymaster offered to ABIC a partial satisfaction of the punitive damages award against ABIC. As detailed more fully below, Paymaster contends that this partial satisfaction to ABIC was to take the form of Paymaster crediting the $1,700,000 payment from UCIS and

the Raydens directly against ABIC's punitive damages. ABIC contends that this partial satisfaction from Paymaster was to be independent from and in addition to the underlying payments from UCIS.

Concurrent with the Paymaster/UCIS Settlement, ABIC executed a Settlement Agreement and Mutual Release with UCIS and the Raydens. The release of UCIS and the Raydens was expressly contingent upon ABIC receiving from Paymaster the partial satisfaction of judgment:

> 1.1 A material contingency of this Agreement is that ABIC is to receive partial satisfaction of judgment in the amount of one million seven hundred thousand dollars ($1,700,000) from The Paymaster Corporation ("Paymaster") to be credited towards the award of punitive damages against ABIC in the Lawsuit. Unless and until ABIC's undersigned counsel receives an executed partial satisfaction of judgment from Paymaster in the form attached hereto as Exhibit "A", this agreement shall have no force or effect.

This contingency was satisfied on November 11, 1988, when Paymaster provided the partial satisfaction of judgment to ABIC. In addition to the partial satisfaction of judgment, Paymaster also sent ABIC the following letter, of which the first paragraph reads:

> In consideration of ABIC entering into its contingent settlement agreement and mutual release with UCIS, Burt, Eileen, Jeff and Joel Rayden and contingent releases with their insurers, Paymaster yesterday delivered to you a partial satisfaction of judgment against ABIC signed by [Thomas Edwards.]

On November 14, and 29, 1988, Paymaster received the $1,200,000 and $500,000 settlement payments from UCIS' insurers and the Raydens respectively.

THE ARGUMENTS

Based on the foregoing transactions, Paymaster contends that the agreements reflect that Paymaster was to receive the $1,700,000 payment from UCIS and the Raydens and credit that payment to ABIC's punitive damages. ABIC argues that there were two partial satisfactions, each based upon independent consideration: the partial satisfaction of judgment from Paymaster to UCIS and the Raydens in return from the $1.7 million payment should be credited against the compensatory damages, and the partial satisfaction from Paymaster to ABIC in consideration of ABIC dropping its cross-claims should be credited against ABIC's punitive damages. In effect, Paymaster argues that ABIC should only receive a $1,700,000 reduction in its total liability, while ABIC contends it should receive a $3,400,000 reduction.

A. *Paymaster's Argument*

Paymaster argues that all of the evidence relating to the settlement agreements and the circumstances surrounding the settlement shows that the partial satisfaction of judgment was intended to reflect the manner in which the settlement payment was to be credited against the judgment and was not intended to reduce the judgment against ABIC by $1,700,000.

First, Paymaster points out that the partial satisfaction was given to ABIC at the same time and in the same amount as the settlement payment being made to Paymaster by UCIS and the Raydens. Paymaster states that the amount reflected in the partial satisfaction to ABIC was directly tied to the amount of the payment being made by the other judgment debtors and was subject to later adjustment if Paymaster was required to return any portion of that payment. As evidence of this, Paymaster cites the letter it sent to ABIC:

> Furthermore, you acknowledge and agree that the satisfaction is null and void if any of the Settling Parties files bankruptcy during the ninety (90) day period following the closing of the Settlement (as defined in Paragraph 2.3 of the Agreement), and you are notified of same by Paymaster's counsel, you agree to return the signed partial satisfaction to Paymaster's counsel.

Second, Paymaster argues that if ABIC had expected to receive such a double credit in connection with the Settlement, it is inconceivable that it would have failed to insist that the settlement agreements reflect the reduction of the unpaid balance by a full $3.4 million instead of the $1.7 million shown in the Partial Satisfaction of Judgment. To support this argument, Paymaster notes that such a $3.4 million credit is not documented in any way in any of the settlement agreements and the declarations of the counsel for all the parties and insurers other than ABIC involved in the settlement agreement negotiations state that the issue of a double credit was never discussed.

Third, Paymaster contends that the actions of ABIC following the settlement agreements show that ABIC did not believe that the settlement agreements reflected a $3.4 million reduction. As evidence of this, Paymaster points to a letter of credit dated October 2, 1989, in which the amount still owing on the judgment was listed at $8,376,708. Paymaster claims that ABIC would have sought a reduction in the amount of the letter of credit at that time if it had in fact believed then that the judgment had been reduced by the amount which it now claims.

Finally, Paymaster lists several reasons why the settlement as Paymaster envisions it was highly advantageous to ABIC. 1) ABIC had no reason to expect that it could ever recover more from the Raydens than the $1.7 million which they and their insurers were offering to pay in settlement in 1988. 2) The cross-claims for indemnity against UCIS and the Raydens that ABIC was being asked to release as part of the settlement had not been reduced to judgment, and UCIS and the Raydens were asserting counterclaims against ABIC. 3) ABIC wanted to insure that any payment made by the other judgment debtors reduced the judgment against ABIC. 4) ABIC also wanted to have any payment made by UCIS and the Raydens credited against the punitive damages portion of the judgment against ABIC, as opposed to the compensatory damages portion of the judgment for which all of the judgment debtors were jointly liable.

As to this last point, Paymaster asserts that ABIC's main concern in the settlement was having the payment made by the other judgment debtors credited against ABIC's punitive damages. Paymaster claims that ABIC wanted the settlement structured in this way because

ABIC hoped to recoup more of the judgment from its own insurance carriers, which were potentially obligated to indemnify ABIC against the compensatory damages, but could not, as a matter of law, indemnify them for the punitive damages.

However, both parties recognize that a public policy problem, explained more fully below, might exist with a payment made by UCIS and the Raydens being credited towards ABIC's punitive damages. In an effort to address this issue, Paymaster contends that although the payment flowed directly from UCIS and the Raydens to Paymaster, the Partial Satisfaction of Judgment reflected that ABIC had received the money from UCIS' insurers and the Raydens and then made the payment to Paymaster itself. Having purportedly structured the payments this way, Paymaster asserts there is no violation of any public policy since ABIC paid off their own punitive damages.

B. *ABIC's Arguments*

As stated above, ABIC contends that there were two partial satisfactions, each based upon independent consideration. Thus, ABIC argues, they are entitled to two credits: one against the compensatory damages and one against the punitive damages.

As to Paymaster's argument that if ABIC had intended that there be a double credit it would have made it clear, ABIC responds that there was no reason for it to seek further documentation. ABIC states that the partial satisfaction of the compensatory portion of the judgment was fully documented in the Paymaster/UCIS Settlement Agreement, and that upon Paymaster's receipt

of the payment, the amount of the compensatory portion of the judgment for which ABIC remained liable would be reduced as a matter of law. Furthermore, ABIC argues, if Paymaster had intended that the punitive damages satisfaction provided to ABIC was in place of and instead of the credit to which ABIC was entitled as a matter of law, Paymaster would have required the documentation to so state.

ABIC also argues that it is no surprise that the amount of the payment from UCIS and the Raydens is the same as the amount of ABIC's partial satisfaction, since what ABIC asked for was a dollar-for-dollar match of the payment. Thus, it is also not surprising that the letter from Paymaster to ABIC would reflect that if Paymaster had to return any portion of the money it received from UCIS, then the dollar-for-dollar match would also be reduced correspondingly.

Paymaster claimed that ABIC's failure to reduce the face amount of the outstanding letter of credit is evidence of the fact that ABIC had no expectation that the compensatory portion of the judgment had been reduced. ABIC counters that what Paymaster has failed to appreciate is that the stipulated supersedeas bond had no mechanism to reduce the letter of credit. Furthermore, ABIC points out that not only does the letter of credit not reflect a reduction in the compensatory damages, but it does not reflect Paymaster's position that the punitive damages were reduced either.

As to the two settlement agreements, ABIC argues that the documents on their face rebut any argument Paymaster posits about their construction. The letter from

Paymaster to ABIC accompanying the Partial Satisfaction of Judgment states that the partial satisfaction is "[i]n consideration of ABIC entering into its contingent settlement agreement and mutual release with UCIS, Burt, Jeff and Joel Rayden and contingent releases with their insurers." Furthermore, the Partial Satisfaction itself reads that ABIC, and no one else, "has partially satisfied the above referenced award for punitive damages in the amount of One Million, Seven Hundred Thousand Dollars." ABIC argues that contrary to Paymaster's fiction, ABIC did not receive money from UCIS' insurers and the Raydens to pay Paymaster. Instead, the Paymaster/UCIS Settlement Agreement clearly contemplates that the payment would go directly from the insurers to Paymaster, with no mention of ABIC being involved.

Furthermore, ABIC argues that it would never have agreed to the settlement as Paymaster interprets it. First, ABIC asserts that by law any payments made by a co-defendant for compensatory damages would be set-off against the total compensatory award.[1] Next, ABIC contends that public policy does not allow for UCIS' insurers to pay off ABIC's punitive damages. Third, while Paymaster may contend that the Paymaster/UCIS Settlement could have been structured in such a way that the payments from UCIS' insurers and the Raydens went to satisfy UCIS' punitive damages, thus defeating ABIC's argument that they are entitled to an automatic set-off of compensatory damages, ABIC counters that the Paymaster/UCIS Settlement could not have been structured that way. The reason is that it would be against public policy

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[1] The public policy issue is examined below.

for UCIS' insurers to pay UCIS' punitive damages. Likewise, since the Raydens were not liable for any punitive damages, it also would have been against public policy for them to pay UCIS' punitive damages. Finally, ABIC argues that it never would have released its cross-claims against UCIS if all it would have received was a set-off that it was entitled to by law anyway.

DISCUSSION

A. *Interpretation of the Agreements*

Four documents bear on the analysis of this case. These documents are 1) the Paymaster/UCIS Settlement Agreement, 2) the ABIC/UCIS Settlement Agreement and Mutual Release, 3) the Partial Satisfaction of Judgment from Paymaster to ABIC, and 4) the letter from Paymaster to ABIC concerning the Partial Satisfaction.

Settlement agreements between parties are contracts and must be interpreted as any other contact. Cal. Civ. Code § 1635; *Adams v. Johns-Manville Corp.*, 876 F.2d 702, 704 (9th Cir. 1989). "A contact must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Cal. Civ. Code § 1636. Under traditional contract principles, this rule meant that extrinsic evidence was inadmissible to interpret, vary or add to the terms of an unambiguous integrated written instrument. *Trident Center v. Connecticut General Life Ins.*, 847 F.2d 564, 568 (9th Cir. 1988); 2 B. Witkin, *California Evidence* § 981, at 926 (3d ed. 1986). However, the modern rule, as established by the California Supreme Court in *Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging*

Co., 69 Cal.2d 33, 69 Cal. Rptr. 561 (1968), is not whether the meaning appears plain and unambiguous on the face of the instrument, but whether the evidence is relevant to prove a meaning to which the language is reasonably susceptible. *Id.* at 37. Accordingly, both the agreements themselves and the extrinsic evidence will be considered in construing the overall meaning of the settlements.

Reading the agreements together, the Court finds that two separate satisfactions occurred. The documents provide that the partial satisfaction of punitive damages provided to ABIC was premised upon independent consideration, separate and apart from the payments received by Paymaster which under the agreements operated to reduce compensatory damages.

The Paymaster/UCIS Settlement Agreement clearly states that the payments were to go directly from UCIS' insurers and the Raydens to Paymaster. The document makes no mention of ABIC being involved in the agreement. While Paymaster contends that the declarations submitted demonstrate that there was no mention of a double credit, this is of no probative value, since the lack of mention does not reveal what actually happened.

The ABIC/UCIS Settlement Agreement and Mutual Release also confirms the fact that UCIS's insurers and the Raydens were to pay the money directly to Paymaster, and that ABIC was to receive from Paymaster a partial satisfaction of judgment. Contrary to what Paymaster alleges the structure of the payments was to be, this document does not purport to pay the money first to ABIC and then to Paymaster.

If the payment from UCIS' insurers and the Raydens were actually just being credited to ABIC's punitive damages as Paymaster alleges, then one would suspect that mention of that payment would appear in the Partial Satisfaction of Judgment from Paymaster to ABIC. Instead, the Partial Satisfaction of Judgment does not even mention the payment from UCIS' insurers and the Raydens to Paymaster. Rather, this document states only that ABIC "has partially satisfied the above referenced award for punitive damages in the amount of One Million, Seven Hundred Thousand Dollars ($1,700,000), said sum to be credited towards principal of the punitive damages award of $2,361,000."

Finally, the letter from Paymaster to ABIC demonstrates that the Partial Satisfaction of Judgment was given to ABIC for the independent consideration of ABIC dropping its cross-claims against UCIS. On November 10, 1988, a first draft of the letter was delivered. The first paragraph of the letter stated:

> Enclosed please find a copy of the final settlement agreement, which we expect to be signed in this case no later than Friday, November 11, 1988, and a partial satisfaction of judgment signed by Thomas Edwards, on behalf of The Paymaster Corporation, in favor of American Bankers Insurance Company.

Counsel for ABIC, Henry Gradstein, stated in his declaration that when he received this letter, he did not believe that it stated that the partial satisfaction of the punitive damages was premised on the independent consideration of ABIC releasing its cross-claims. He then telephoned Paymaster's counsel, Thomas Edwards, and relayed this

to him. The next day, November 11, 1988, Mr. Edwards sent a second draft of the letter. The first paragraph of this revised letter stated:

> This letter is meant to replace yesterday's letter of November 10, 1988 from Sue Montgomery to you. In consideration of ABIC entering into its contingent settlement agreement and mutual release with UCIS, Burt, Eileen, Jeff and Joel Rayden and contingent releases with their insurers, Paymaster yesterday delivered to you a partial satisfaction of judgment against ABIC signed by me.

This revision demonstrates that the release of the cross-claims was an independent consideration for the partial satisfaction of the punitive damages. Mr. Edwards alleges that he sent a second copy of the letter to ABIC because the first letter had not been signed by him. However, if that were true, it would not explain why he revised the first paragraph if all ABIC's counsel requested was a signed copy.

B. *Public Policy Considerations*

ABIC contends that the agreements, if read as Paymaster would have them interpreted, violate public policy in that another party would be paying ABIC's punitive damages. Paymaster, recognizing that the agreements might conflict with public policy, allege that the parties intended for the agreements to read as if the payments went from UCIS' insurers and the Raydens to ABIC, and then to Paymaster.

California Civil Code section 1668 states:

> All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

ABIC was found liable for, among other things, intentional injury to the business of Paymaster, intention to disparage the quality of the merchandise and services offered by Paymaster, intentional interference with the potential economic advantage of Paymaster, and intention to unfairly compete with Paymaster by intimidating its customers. For someone else to pay ABIC's punitive damages, by settlement or other means, as a result of this liability would relieve ABIC of the responsibility for its own willful wrongdoing in contravention of section 1668. The only way for ABIC to relieve itself of these damages would be for it to either pay the damages itself or enter into an agreement directly with Paymaster, which it did. Furthermore, even if the payments were construed in such a manner that they went from UCIS to ABIC to Paymaster, which the Court finds the agreements do not support, this might still amount to an indirect relief of ABIC's responsibilities by someone else. In short, the substance of the transaction would be more significant than its form.

ABIC is also correct that, given the source of the payments, Paymaster could not have constructed the agreement in such a way that the payments would have paid off anything but the compensatory damages. The Raydens were not liable for any of the punitive damages,

thus the only payments they could have made had to go to compensatory damages. Since UCIS' insurers paid for their liability, that payment also could only have gone to compensatory damages since California law forbids an insurer from indemnifying an insured for punitive damages. Cal. Ins. Code § 533; *Ohio Cas. Ins. Co. v. Hubbard*, 162 Cal.App.3d 939, 946, 208 Cal.Rptr. 806, 811 (1984).

C. *Single Satisfaction Rule*

Finally, ABIC is also correct in that when one of several judgment debtors makes partial payment of the judgment, the amount of the judgment is reduced as to all judgment debtors. *Kemp v. Barnett*, 62 Cal.App.3d 245, 248, 132 Cal.Rptr. 823, 825 (1976) ("[I]f partial satisfaction of a judgment is received from one [joint tort-feaser], the liability of the others is reduced correspondingly."); 5 Witkin, *Summary of California Law* Torts § 57 (9th ed. 1988). Accordingly, ABIC was and is entitled to a reduction of its joint and several compensatory damages in the amount of the payment by UCIS' insurers and the Raydens.

CONCLUSION

Based on the foregoing, the Court finds that two separate satisfactions occurred. Accordingly, ABIC is entitled to a partial satisfaction of its compensatory damages in the amount of $1,700,000, and a partial satisfaction of its punitive damages in the amount of $1,700,000.

IT IS SO ORDERED.

DATED: August 8, 1990

/s/ Stephen V. Wilson
STEPHEN V. WILSON
UNITED STATES
DISTRICT JUDGE